

**From:** Roger Allan/DC/USEPA/US  
**Sent:** 8/20/2012 9:45:46 AM

**To:** Henry Barnet/DC/USEPA/US@EPA; Matthew Morrison/DC/USEPA/US@EPA; Becky Barnes/DC/USEPA/US@EPA; Beth Behrens/NEIC/USEPA/US@EPA; CID ASAC ALL; CID SAC ALL; Doug Parker/DC/USEPA/US@EPA; Gary Guerra/DC/USEPA/US@EPA; Hamilton Humes/DC/USEPA/US@EPA; James Beaty/DC/USEPA/US@EPA; almichau@mtu.edu; Jennifer Youngberg/DC/USEPA/US@EPA; Jon Jacobs/DC/USEPA/US@EPA; Jonathan Cole/DC/USEPA/US@EPA; Julie Lastra/DC/USEPA/US@EPA; Leonard Borges/DC/USEPA/US@EPA; Lisa Desiderio/DC/USEPA/US@EPA; Mark Badalamente/DC/USEPA/US@EPA; Michael Burnett/CID/R7/USEPA/US@EPA; Mike Fisher/DC/USEPA/US@EPA; Patricia Straw/DC/USEPA/US@EPA; Peter Rosenberg/DC/USEPA/US@EPA; Roger Allan/DC/USEPA/US@EPA; Steven Drielak/DC/USEPA/US@EPA; Tom Norris/NEIC/USEPA/US@EPA; coleman.anita@epa.gov; Andrew Lauterback/R1/USEPA/US@EPA; Elizabeth.Janes@usdoj.gov; Brian McKeown/NEIC/USEPA/US@EPA; Ted Owens/DC/USEPA/US@EPA; Carol Rushin/NEIC/USEPA/US@EPA; Christine Guitar/DC/USEPA/US@EPA; Geri Gilbert/R9/USEPA/US@EPA

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**LAW: Fresh off Supreme Court win, legal group girds for more battles with EPA**  
(Greenwire)

**Cabot, Dimock families near settlement on gas drilling contamination** (Chicago Tribune)

**Feds wrapping up Yellowstone pipeline spill probe** (Anchorage Daily News)

**Italian Ship Owner Fined \$1 Million for Concealing Discharges of Oily Wastewater into Sea** (Environmental Protection)

**Pueblo landlord gets 4 years for hiring homeless to remove asbestos** (Denver Post)

**Clean Water Act violations rising, seldom punished** (Fort Wayne Journal Gazette, 08-19-12)

**TWO OIL WELL OPERATORS ARRESTED FOR VIOLATIONS OF SAFE DRINKING WATER ACT** (WCLU-FM radio, 08-18-12)

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**LAW: Fresh off Supreme Court win, legal group girds for more battles with EPA** (Greenwire)

**Outlet Full Name:** Greenwire

**News Text:** SACRAMENTO, Calif. -- Alongside the replica London taxicab and a jar of candy on attorney Damien Schiff's desk, a blue trucker cap has a place of honor. The cap -- advertising "Sackett Contracting & Excavating" -- was a gift from clients Mike and Chantell Sackett after Schiff successfully argued on their behalf in a recent Supreme Court case. The resulting decision, Sackett v. EPA, was a crushing loss for U.S. EPA in the 32-year-old lawyer's first appearance before the high court (Greenwire, March 31).

Since the March ruling, Schiff's star has risen. He's become a sought-after speaker at legal events. Potential clients are calling with their own tales of EPA-generated angst.

The unanimous Supreme Court ruling also served to burnish the reputation of Schiff's employer, the Pacific Legal Foundation, which is based here in a modest two-story office building just a few blocks from the state Capitol.

The conservative nonprofit legal group has been a thorn in EPA's side for almost the entire life of the agency.

In fact, PLF, as it's known, celebrates its 40th birthday next year, just three years after EPA reached the same landmark.

The Supreme Court win -- not the group's first -- has served to keep it in the public eye at a time when Republicans in Congress have been lambasting EPA for what they perceive as its overreach when it comes

to regulation.

Sitting behind the desk in his comfortable office, Schiff conceded that PLF and EPA aren't on best terms.

"They certainly aren't inviting us to any cocktail parties," he said.

PLF's founding in 1973 had a lot to do with the man who occupied the governor's mansion down the street here: Ronald Reagan.

At a time when a conservative backlash against perceived liberal dominance in politics, policy and the law was just beginning, several aides to the Republican governor saw the need for a legal organization that could help lead the charge.

Ron Zumbrun, who worked on California welfare reform in the Reagan administration, became the first president of the fledgling group.

The current president, Robin Rivett, who joined two years later, said there was a sense at the time that liberal groups had a head start when it came to setting up public interest law firms.

"There were a number of folks who thought there was an imbalance," he said.

PLF was part of the first wave of conservative legal groups that emerged at that time. Others include the Mountain States Legal Foundation in Colorado and the Washington Legal Foundation in Washington, D.C.

The Federalist Society, a group aimed at fostering a new generation of conservative lawyers and judges, followed in 1982.

PLF quickly gained a reputation for focusing on property rights, often in the context of environmental regulation, according to Jefferson Decker, an assistant professor at Rutgers University who has studied the rise of the conservative legal movement.

With its focus mainly on the West then, the principal opponent was not U.S. EPA but rather the California Coastal Commission.

That struggle culminated in a major victory for PLF before the Supreme Court in 1987. In a case called *Nollan v. California Coastal Commission*, the court held the agency could not force property owners to provide a pathway to the beach as a condition for seeking a building permit.

As Decker noted, it's quite possible the property owners, James and Marilyn Nollan, would never have pursued the case if they hadn't had the pro bono legal assistance of PLF.

In that instance, PLF was already benefiting from its reputation as "the place to go if you had a gripe with the California Coastal Commission," Decker said.

A quarter-century later, it was the same reason why Mike and Chantell Sackett sought PLF's assistance, only this time in relation to EPA.

Wading into wetlands

The Sacketts, who own a small lot in Priest Lake, Idaho, came calling over another issue with which PLF has become synonymous: wetlands jurisdiction under the Clean Water Act.

That's largely due to the 2006 Supreme Court case *Rapanos v. U.S.*, which concerned the efforts of Michigan landowner John Rapanos to develop a property that, much to his dismay, was designated a wetland. He hadn't applied for a permit and was subsequently the target of EPA civil and criminal enforcement actions.

PLF won that case, but it came at a cost: The court was so fractured that the whole issue of wetlands jurisdiction remains a mess (Greenwire, Feb. 7, 2011). It's one that Congress would need to resolve, but hasn't.

In 2007, the Sacketts had started building on their lot without a wetlands permit. When EPA paid a visit and issued a compliance order requiring them to stop work or face a daily fine, they decided they needed a lawyer. A local attorney referred them to PLF.

Once the case got to the Supreme Court, the issue wasn't quite what PLF would want to argue. Ideally, the group would like to tackle head on the extent of EPA's jurisdiction over wetlands. Instead, the court wrestled with the narrower issue of whether the Sacketts had a right to contest the issuance of the compliance order in court. The justices held that they did have such a right.

Schiff concedes that the question before the court was an easier one for him to win.

"The so-called liberal wing of the court is generally open to expanding judicial review," he said.

But he insisted that the case still fits PLF's mission.

"Our primary focus is that one has a fundamental right to use and enjoy one's own property subject to reasonable regulation to prevent injury to others," he said. "The Sacketts were certainly precluded from reasonable use of their property, but we couldn't even get a court to adjudicate on whether that restriction on the use of their property was legitimate or not."

Others might not agree with PLF on its wider aims, Schiff added, "but the Sackett case avoided that issue by saying, 'At least give us our day in court.'"

Schiff's -- and PLF's -- performance in the case won widespread praise.

"They did an excellent job and outlawyered the government," said Richard Frank, director of the California Environmental Law and Policy Center down the road from Sacramento at the University of California, Davis, School of Law.

PLF President Rivett was delighted with the work Schiff and his colleagues did on the case.

"Being there as a young attorney for the very first time, you are going to be extremely nervous," he said. "I know he was, but he didn't show it."  
'Laserlike focus'

PLF, after years of court fights with EPA, has met with a grudging respect from both those within the agency and its lawyers at the Justice Department.

Adam Kushner, a former enforcement official at EPA, now a lawyer at Hogan Lovells, said the group has made effective use of the courts in order to advance its conservative goals.

"They have a serious agenda," he said. "They seem to have some ability to advance that in the courts."

Within government, its filings are given careful attention, Kushner added. PLF is "not like some of those other groups where you see a claim and you roll your eyes," he said.

UC Davis' Frank concedes that it sometimes "drives my environmentalist friends nuts" that he is so complimentary about PLF's effectiveness.

"They have hired some good lawyers. They have a laserlike focus on the issues. They have been very influential over the last 25 years," he said.

At one point, Frank, who for a long time served in the California Attorney General's Office, even unsuccessfully tried to hire one of PLF's attorneys.

Environmentalists are less keen on PLF.

Patti Goldman, an attorney at Earthjustice, has had contact with the group mostly via Endangered Species

Act litigation. PLF is not a fan of the law, which it believes should take more account of individuals' property rights.

PLF has been behind "wholesale attacks" on the act that have been "universally unsuccessful," she said.

Goldman doesn't have much time for PLF's complaints about the statute, noting that the law has withstood court scrutiny in large part because it provides for public notice and comment.

Listings "can't be done without public participation," she said. "What they are seeking is special rights for certain interests."

Fundraising

Environmentalists' complaints are unlikely to deter PLF, which has big plans.

Despite their relative success in the courts, PLF lawyers continue to rage against government power.

Rivett stakes out the position of a true believer, maintaining that not only has the overall picture not improved since PLF was founded, but it's gotten worse.

"I think government has done what government does," he said. "It grows and it can become more oppressive, and I think it has become more oppressive over the years."

Where PLF has been successful has been "in making governmental agencies think twice before they do certain things because they know they are going to be in our cross hairs," he added.

It's a theme Schiff picks up on in describing the group's relationship with EPA.

"I can't think they feel we threaten their existence. When we win, the change is going to be incremental," he said. "I don't think EPA necessarily quakes in its boots when it sees us, but at the same time I hope they would take us seriously."

The group has about 50 employees, including just more than 20 lawyers. In 2010, it raised slightly more than \$14 million and spent just over \$7 million, according to tax records for that year.

PLF says 49 percent of donations came from individuals, with 27 percent raised through foundations and 24 percent coming from businesses and what the group calls "other organizations."

Rivett said he plans to hire more attorneys and is considering opening an office in Washington so the group can be more responsive to media inquiries and invitations to testify at congressional hearings.

Schiff plans to continue with challenges to the Endangered Species Act, even though he admitted the group is running out of circuit courts where it can press its claims that the law is unconstitutional. Separately, PLF recently filed a petition asking that orcas -- more commonly known as killer whales -- in the Pacific Northwest be removed from the list of endangered species (E&ENews PM, Aug. 2).

PLF also plans to keep pressing its efforts to limit wetlands jurisdiction. That will take the form of a legal challenge to the latest administration guidance on the issue, which is yet to be finalized.

The group has been keen to engage on climate change, too.

PLF lawyers see climate rules in the same light as they do other any other government regulations that they believe stifle the economy. The group steers clear of what Schiff describes as "affirming or denying climate change."

PLF joined an industry- and state-led coalition that unsuccessfully sought to invalidate the Obama administration's greenhouse gas regulations in litigation before the U.S. Court of Appeals for the District of Columbia Circuit (Greenwire, June 26).

It is one of the groups that has filed a petition seeking rehearing in the case.

Closer to home, PLF plans to challenge California's carbon cap-and-trade program, known as A.B. 32.

As for the question of the science behind climate change and how much of a threat it might be, Rivett insisted that when the group gets involved in climate litigation, it's looking only "at the way regulations are enacted ... especially if they have a significant effect on the economy."

Mankind may well have contributed to climate change, he added, but "the level of contribution, I don't know."

Sackett reprised

The success in Sackett looks as if it could open up a new front in PLF's battle against the government.

Many of the potential clients who have called seeking advice since the ruling complain of similar treatment, not just at the hands of EPA but also other agencies, including the Army Corps of Engineers.

Schiff hopes Sackett will help him challenge Army Corps decisions on wetlands jurisdiction. But first, he has a case in New Mexico involving property owners who had a "Sackett-like experience" with the corps.

PLF might also file briefs in cases that were already under way before the Supreme Court issued its ruling. One involves a chicken farm in West Virginia; another concerns Gasco Energy Inc. in Colorado. In both cases, EPA issued a compliance order and the companies involved were not able to challenge it in court first.

That both of those cases involve businesses challenging EPA action highlights the not-so-hidden secret about PLF: While it likes to see itself as a group that represents put-upon homeowners like the Sacketts, business interests also tend to benefit from the cases it wins.

The chairman of PLF's board of trustees is John Harris, the chairman and CEO of Harris Farms Inc., which describes itself on its website as "one of the nation's largest, vertically integrated family-owned agribusinesses." Other members of the board of trustees include several former or current executives of construction companies and various lawyers who represent companies in land use and real estate issues.

In Washington, legal experts thought it particularly notable that the Supreme Court took up Sackett instead of a petition filed by General Electric Co. that raised similar issues (Greenwire, July 11, 2011).

Paul Clement, a leading Supreme Court advocate at the Bancroft law firm, said at a U.S. Chamber of Commerce event in June that the "plight of the Sacketts ... is probably a little more sympathetic than the plight of GE."

Whether or not PLF acts as a stalking horse for the business community, it won't stop the group from embracing the more compelling narrative of sympathetic homeowners just trying to do what they want on their own land.

"It's the little guy," Rivett said in describing how Sackett fits in with PLF's mission. "A property owner who can't afford to represent himself when it comes to trying to protect his own interests against large governmental entities that have unlimited resources."

## **Cabot, Dimock families near settlement on gas drilling contamination** (Chicago Tribune)

**Outlet Full Name:** Chicago Tribune - Online

**News Text:** A high-profile and often bitter lawsuit brought by three dozen Dimock Twp. families against Cabot Oil and Gas Corp. is nearing a settlement for several residents who allege natural gas drilling contamination harmed their health and property, according to court papers filed in federal court late Monday.

The amended motion filed by attorneys for the residents identifies the settling plaintiffs, but the names have been redacted. The settlement amounts and terms are not disclosed.

The main purpose of the new court filing is to create a fund to distribute settlement money, but the document details some conditions of the otherwise confidential agreement. Cabot submitted the offers in May and June, and the settling families were required to sign a broad release "outlining the terms of the settlement and requiring complete confidentiality" about its content, according to the filing.

The sides aim to complete the settlement process for the families that have signed off on it within 60 days, according to the motion. As settlement money is paid to each family, its case will be dismissed.

The motion Monday follows earlier public signals that the two sides were close to an agreement.

In a conference call with investors on July 25, Cabot CEO Dan O. Dinges said the company had reached verbal settlement agreements with 32 of 36 Dimock households and was continuing to negotiate with the remaining families.

Mr. Dinges said during the call that the value of the settlements "are not a material item with respect to Cabot's financial statements."

Both the families' attorney, Tate J. Kunkle, of the New York-based law firm Napoli Bern Ripka Shkolnik, and Cabot spokesman George Stark declined to comment on Tuesday.

Victoria Switzer, who has been a vocal critic of Cabot's operations in Dimock, made a brief statement for her family.

"We are relieved to put this behind us and hopeful that we will be able to live out our lives in the home we have invested so much of our time and resources in," she said. "I would advise anyone living in a gas field with concerns or disputes involving a gas company to try to work with them."

Some residents said they plan to push on with the case.

"I'll see you in court," said Ray Kemble, who did not sign the settlement agreement because he said he dislikes terms set by both his attorneys and Cabot's.

The agreement would limit what he can say publicly, he said, adding that of the 40 protest signs he has posted on his property, his attorney told him the only one he would have to take down "is the one big one out there that says, Make Cabot Pay."

Mr. Kemble said the settlement would also dissolve portions of a December 2010 settlement reached between Cabot and the state that required the driller to offer 19 families affected by methane contamination twice the assessed value of their homes and a treatment system to remove the gas from their water. Most of the families in the lawsuit did not take the money or the treatment systems.

"That is no longer on the table," said Mr. Kemble, who makes daily drinking water deliveries to families who were once provided with bulk and bottled water by Cabot or, more recently, the U.S. Environmental Protection Agency.

The families sued Cabot in November 2009, nearly 11 months after a blast that first drew regulators' attention to flaws in Cabot's wells blew the concrete cover off a water well at the home of Norma Fiorentino, the first named plaintiff in the case.

Although Cabot settled with the state over methane contamination in water wells connected to 19 Dimock homes, it denies it polluted township water supplies with gas or other substances. A six-month water sampling effort by the EPA ended last month with the agency declaring that arsenic, barium or manganese in five water wells could be safely treated and no further action in Dimock was necessary.

## Feds wrapping up Yellowstone pipeline spill probe (Anchorage Daily News)

**Outlet Full Name:** Anchorage Daily News - Online

**News Text:** HELENA, Mont. (AP) - A federal investigation into last year's Yellowstone River oil pipeline spill is expected to wrap up next month now that regulators have received a key document that reveals the cause of the break, a pipeline safety official said Friday.

Chris Hoidal, the Western region director for the Pipeline and Hazardous Materials Safety Administration, said his agency last week received a metallurgical report that shows the definitive cause of the July 2011 Exxon Mobil Corp. pipeline failure.

Hoidal, who was in Helena to update state officials on the investigation and pipeline improvements since the spill, said the report will remain confidential while the accident investigation is still open. He declined to say what caused the break, though he ruled out internal pipeline corrosion.

"There were no surprises in the report," he said.

Officials have previously speculated that the 12-inch line, which had been buried a few feet below the riverbed, was exposed by high water last spring and damaged by passing debris, but an official cause has not been released.

The pipeline break dumped 1,500 barrels of crude into the pristine Montana waterway and was quickly swept downriver toward North Dakota after it took people responding nearly an hour to shut down the line. Crews worked for months to collect oil from the shoreline, backwaters and logjams, but only about 1 percent was recovered.

That pipeline and several others crossing major waterways in the state have since been buried dozens of feet below the riverbeds using directional drilling technology, Hoidal said. More pipelines will be buried next year, he said.

PHMSA must now decide whether to impose penalties on Exxon Mobil. That decision and the accident investigation should be completed by the end of September, though whatever penalties are handed down will be in coordination with an Environmental Protection Agency probe, Hoidal said.

But that information may not be released to the public before November, he said.

Montana officials already have reached a \$1.6 million settlement with Exxon Mobil in a combination of cash and supplemental environmental projects that are still being negotiated.

A state pipeline safety council also is expected to wrap up its work next month when it finalizes its recommendations to Gov. Brian Schweitzer on how future spills can be prevented.

A draft of those recommendations - general words of support for better funding for federal regulators and improving pipeline technology - were widely panned during the public comment period by people who said they did not go far enough.

Many of the commenters said the state should take a bigger oversight role of the pipelines crisscrossing the state.

Montana Department of Environmental Quality director Richard Opper said Friday that the Oil Pipeline Safety Review Council will rewrite the recommendations based on the public comments.

But the changes are unlikely to recommend that the state share regulatory authority of interstate pipelines with PHMSA.

The state doesn't have the money, the expertise or the legislative authority to do so, Opper said.

## **Italian Ship Owner Fined \$1 Million for Concealing Discharges of Oily Wastewater into Sea** (Environmental Protection)

**Outlet Full Name:** Environmental Protection

**News Text:** A shipping company headquartered in Italy and the chief engineer of one of its ships were sentenced today in federal court in Mobile, Ala., for deliberately falsifying records to conceal discharges of oily wastewater from the ship directly into the sea. Giuseppe Bottiglieri Shipping Company S.P.A, was sentenced by U.S. District Court Judge Ginny Granade in the Southern District of Alabama to pay a \$1 million criminal fine, serve four years of probation, and make a \$300,000 community service payment to the National Fish and Wildlife Foundation. The company must also fund and implement a comprehensive environmental compliance plan during the term of probation. Chief Engineer Vito La Forgia was sentenced by Judge Granade to one month in jail.

Giuseppe Bottiglieri Shipping Company S.P.A., the owner and operator of the M/V Bottiglieri Challenger, pleaded guilty on July 11, 2012, to a violation of the Act to Prevent Pollution from Ships for failing to properly maintain an oil record book as required by federal and international law. Vito La Forgia, the ship's chief engineer, pleaded guilty on July 12, 2012, to violating the Act to Prevent Pollution from Ships.

According to papers filed in court, between Dec. 19, 2011, and Jan. 25, 2012, Vito La Forgia and other senior Bottiglieri Shipping Company employees discharged oily bilge waste from the M/V Bottiglieri Challenger on multiple occasions as the vessel sailed from Singapore to Brazil and then from Brazil to Mobile. The vessel arrived in the Port of Mobile on Jan. 25, 2012, and underwent a Coast Guard inspection. Based on information provided to the Coast Guard by engine department crewmembers and evidence discovered during the Coast Guard's inspection, it was evident that there were internal transfers and discharges of oily waste into the ocean that were not recorded in the vessel's oil record book as required. The deliberate overboard discharges of oily waste were accomplished through the use of a "magic pipe" that connected the ship's purifier sludge tank with the ship's bilge holding tank, the contents of which were then pumped overboard without first being processed through required pollution prevention control equipment designed to detect and prevent discharges containing more than 15 parts per million oil.

Federal and international law requires that all ships comply with pollution regulations that include proper disposal of oily water and sludge by passing the oily water through a separator aboard the vessel or burning the sludge in the ship's incinerator. Federal law also requires ships to accurately record each disposal of oily water or sludge in an oil record book and to have the record book available for the U.S. Coast Guard when the vessel is within the waters of the United States.

"This case represents a second tremendous win for our environment in just the past few months," said Kenyen Brown, U.S. Attorney for the Southern District of Alabama. "The U.S. relies on vessel crews and their management companies to provide accurate logs and records when calling on U.S. ports to ensure oily wastes are discharged properly at sea. The U.S. is fully committed to prosecuting those cases where vessels cover-up improper oily waste discharges at sea through the use of falsified logs. Our aim is twofold, to preserve our natural resources for future generations, and second, to clean up a corrupt corporate culture that would place greed above all else. I am also pleased that my office was able to play a role in securing another \$300,000 for waterway preservation and conservation projects in the Mobile Bay and throughout the Southern District of Alabama. This prosecution would not have been possible without the hard work of the U.S. Coast Guard at Sector Mobile and District Eight, Coast Guard Criminal Investigative Service, the Environmental Protection Agency Criminal Investigation Division and Department of Justice, Environmental and Natural Resources Division, Environmental Crimes Section."

"The government will continue to work tirelessly to ensure companies and employees who do not comply with environmental regulations are held accountable for operating in a manner that harms the marine environment and endangers our nation's resources. I applaud the professionalism and dedication of the members of the Coast Guard, the Environmental Protection Agency and the Department of Justice as they investigated, prepared, and prosecuted these cases," said Rear Admiral Roy A. Nash, Eighth Coast Guard



District Commander.

"The laws are there to protect the oceans and waterways from being used as dumping grounds for waste oil or contaminated waste water," said Maureen O'Mara, Special Agent-in-Charge of EPA's criminal enforcement program in Atlanta. "Commercial vessels must operate safely and legally, and this sentencing sends a clear message that those who violate the law and pollute U.S. or international waters will be vigorously prosecuted."

This investigation was conducted by the U.S. Coast Guard Investigative Service in Mobile and the U.S. Environmental Protection Agency-Criminal Investigation Division in Gulf Breeze, Fla. Additional assistance was provided by U.S. Coast Guard Sector Mobile. The case was prosecuted by Assistant U.S. Attorney Michael Anderson of the U.S. Attorney's Office for the Southern District of Alabama and Trial Attorneys Todd Mikolop and Gary Donner of the Justice Department's Environmental Crimes Section of the Environment and Natural Resources Division.

## **Pueblo landlord gets 4 years for hiring homeless to remove asbestos** (Denver Post)

**Outlet Full Name:** Denver Post - Online, The

**News Text:** A Pueblo landlord was sentenced to four years in state prison for hiring homeless people to remove asbestos from the condemned multi-family home he was demolishing .

Thomas K. Tienda, 49, was convicted on eight felonies in the case prosecuted by the Colorado Attorney General's Office.

The work between May 1, 2007, and July 11, 2007, led to the airborne distribution of asbestos, a toxic fiber that can cause lung illnesses that lead to death.

"Sheer greed drove Tienda to cut costs at the expense of the public and jeopardized the health of vulnerable members of our society, the homeless," said Colorado Attorney General John Suthers said in a statement Friday. "A four-year prison sentence is appropriate and proves that this type of unscrupulous behavior will not go unpunished."

He was convicted last October, and his sentence includes credit for 232 days of time served.

Public records show Tienda has bought and sold numerous homes and other properties in Pueblo, some he bought for as little as \$15,000.

Prosecutors said Tienda lacked proper permits and hired homeless men instead of licensed professionals to do the hazardous work. He did not tell the workers the building contained asbestos, prosecutors said.

Besides releasing asbestos during the demolition, Tienda also used asbestos-contaminated debris to fill for potholes at his other properties.

"There is no safe level of exposure to asbestos," stated Jeff Martinez, acting special agent in charge of EPA's criminal enforcement program in Colorado. "The defendant not only employed unsafe asbestos removal practices, he also tried to cover up his illegal actions. This sentence should send a clear message that the EPA will continue working closely with our state enforcement partners to prosecute those who violate the law and place their private gains over the public's well being."

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## **Clean Water Act violations rising, seldom punished** (Fort Wayne Journal Gazette, 08-19-12)

**State regulators dispute findings from EPA data**

FORT WAYNE – Nearly three out of every four facilities in Indiana operating under the Clean Water Act broke that law in 2009, EPA data show, but of all those violators, only one-third faced any kind of sanctions.

The violations ranged from failing to follow schedules; permitting and reporting problems; to the most severe – polluting the state’s waterways.

And though 73 percent of permit holders – from factories to municipal sewer systems – broke the law, the EPA reported, not one of them paid a financial penalty that year. Anyone who discharges waste into a river, lake or stream must have a Clean Water Act permit.

According to the EPA database, only 23 of the state’s 1,194 violators faced formal enforcement actions, in which they were required to make changes or fix problems. An additional 377 – 32 percent of violators – faced only “informal” enforcement, in which the Indiana Department of Environmental Management sent them a letter notifying them they were breaking the law, the EPA says. The rest saw nothing.

IDEM officials say the EPA database is inaccurate.

“That is clearly not what’s going on in the state of Indiana,” said Bruno Pigott, IDEM’s assistant commissioner for the Office of Water Quality. “This (EPA database) is not representative of what’s really going on. Does that mean three-quarters of our facilities are not in compliance? No. It means that’s what that database says.”

The EPA says the information is accurate, but notes that the information is provided by the states themselves, which could lead to gaps in the data.

Two years ago, a Journal Gazette investigation showed that 17 percent of Indiana facilities with permits under the Clean Air Act had broken the law over the previous three years, but few were punished. This new analysis of EPA data shows more than four times as many facilities violated the Clean Water Act in just one year – but still face little, if any, punishment for doing so.

Pigott said the number of violations in the EPA database are artificially high because of old violations that have been resolved, but the database was not updated to show that. He said a violation shown in the EPA data could have been something as simple as a paperwork issue that was resolved years before.

The database says it shows only facilities that had violations that occurred during the year in question, in this case 2009, the last year for which full data is available.

Pigott said there were 179 formal enforcement actions in 2009, not the 23 the EPA reported, but admitted some of those were for drinking water violations, not Clean Water Act issues. He did not know how many of each there were.

David Van Gilder, a Fort Wayne attorney and Hoosier Environmental Council board member, was astounded that the EPA reports nearly three out of every four Clean Water Act permit holders had broken the law.

“Whoa! Seventy-three percent?” Van Gilder said. “There are penalties that can be imposed. These fiscal guys that are looking for money, there it is.”

He was then informed that no financial penalties had been assessed that year.

“Zero? That’s just ridiculous,” he said.

That is especially distressing, Van Gilder said, because enforcement of environmental laws should pay for itself – the penalties imposed on violators should cover the cost of investigating and prosecution violations. Because IDEM divided its enforcement staff among different regulatory departments, officials could not say what they spend on enforcement efforts.

“I think there would be enough there to pay for prosecuting the cases,” Van Gilder said. “I think that’s reasonable.”

He also noted that most environmental laws have a criminal component to them, meaning local prosecutors could be enforcing them, as well. Once again, he said, the fines collected could pay for the prosecution, while also cleaning up a county’s lakes and streams.

“It could probably easily pay for itself,” he said.

The lack of punishment for violators was across the board: The EPA designates whether facilities are “major,” with lots of output, and smaller ones. Of the 195 major facilities in Indiana, 147 had violations in 2009, the EPA said.

But only five had formal enforcement actions where they were required to make changes or solve problems.

IDEM’s Pigott said the state agency is especially vigilant about major permit holders, and said that when violations do occur, the agency negotiates an Agreed Order, a legally binding agreement in which the facility makes required changes, often pays a fine, and agrees to more fines and sanctions if the requirements of the order are not met.

“If they’re in significant noncompliance, we’ve got them under an Agreed Order,” Pigott said. “The facilities in Indiana, when they’re not in compliance, we’re taking action.”

Van Gilder said a major factor in Indiana’s lack of enforcement is its willingness to negotiate with polluters rather than requiring them to follow the law.

“The thinking in Indiana is, ‘let’s solve the problem.’ And then you negotiate how to do that,” Van Gilder said. “But while they’re dithering, another billion gallons goes into the river.”

He said the idea that to be business friendly the state has to look the other way when companies pollute is false.

“You can be business friendly by saying, ‘Here’s the rules, here’s what happens if you violate the rules. We’ll treat you with respect, and in return we expect you to treat our people and our natural resources with respect.’ It seems to me business people would respond to that,” Van Gilder said.

Pigott said he wants Hoosiers to know that IDEM is enforcing environmental laws, whatever the EPA data say.

“It’s easy to make a broad-brush stroke statement that nothing is happening, but the reality is a lot is happening,” Pigott said.

“I believe we’re really doing good work.”

## TWO OIL WELL OPERATORS ARRESTED FOR VIOLATIONS OF SAFE DRINKING WATER ACT (WCLU-FM radio, 08-18-12)

[http://www.wclu-radio.com/index.php?view=article&catid=34%3Anews&id=14903%3Atwo-oil-well-operator-s-arrested-for-violations-of-safe-drinking-water-act&format=pdf&option=com\\_content&Itemid=53](http://www.wclu-radio.com/index.php?view=article&catid=34%3Anews&id=14903%3Atwo-oil-well-operator-s-arrested-for-violations-of-safe-drinking-water-act&format=pdf&option=com_content&Itemid=53)

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Additional charges have been added for two oil well operators in Hart County, Kentucky and have been arrested by Deputy U.S. Marshals and the Criminal Investigations Division of the Environmental Protection Agency (EPA) after being charged with continued violations of the Safe Drinking Water Act announced David J. Hale, United States Attorney for the Western District of Kentucky.

The arrests followed the return of a Superseding Indictment by a federal grand jury meeting in Bowling Green charging Charles L. Stinson of Horse Cave, Kentucky, and Ralph Dowell of Edmonton, Kentucky, operators of Logsdon Valley Oil Co. Inc., with a continued conspiracy to inject fluids into a sinkhole that was not permitted and authorized. The alleged continued violation occurred at the Jagers Grover oil lease in Hart County between April 5, 2012 through June 15, 2012. The superseding indictment also charges defendants Stinson and Dowell with conspiring on July 18, 2012, to willfully inject fluids in to a disguised well which was not

permitted and authorized for underground injection. Both allegations are violations of the Safe Drinking Water Act.

The eight count federal Superseding Indictment returned on August 15, 2012 and unsealed yesterday, alleges on or about March 13, 2008 to on or about June 29, 2010, and between April 5, 2012 to June 15, 2012, and July 18, 2012, in Hart County, Kentucky, Stinson and Dowell conspired with each other and others to violate the Safe Drinking Water Act by configuring piping to inject produced brine water (fluids brought to the surface in connection with oil production) from the tank battery to sinkholes and injecting produced brine water into sinkholes, in violation of the Safe Drinking Water Act.

The Indictment details that Stinson and Dowell, and the corporation Logsdon Valley Oil Company, Inc., improperly conveyed and injected produced water into sinkholes in Hart County on March 13, 2008, December 10, 2009, May 24, 2010, June 29, 2010, April 5, 2012 to June 15, 2012 and on July 18, 2012, improperly conveyed and injected produced water into a concealed well. Federal Regulations provided that "no owner or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any other injection activity in a manner which allows the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR part 142 or may otherwise adversely affect the health of persons."

In the event of a conviction, the maximum potential penalties for Stinson and Dowell are 26 years in prison, a \$1,500,000 fine, and supervised release for a period of 3 years.

The case is being prosecuted by Assistant United States Attorney Joshua Judd, and it was investigated by the United States Environmental Protection Agency/Criminal Investigations Division.

**The indictment of a person by a Grand Jury is an accusation only and that person is presumed innocent until and unless proven guilty.**

